

April 25, 2008

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-142

In Regard to the Matter of:

Bayside State Prison Opinion and Report
Litigation Of the
 Special Master

LESLIE KNORDLE,

-vs-

WILLIAM H. FAUVER, et al,
Defendants.

* * * *

FRIDAY, APRIL 25, 2008

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

April 25, 2008

Page 2

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Transcript of proceedings in the above

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matter taken by Theresa O. Mastroianni, Certified

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Court Reporter, license number 30X100085700, and

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Notary Public of the State of New Jersey at the

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United States District Court House, One Gerry Plaza,

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Camden, New Jersey, 08102, commencing at 9:30 AM.

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April 25, 2008

Page 3

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April 25, 2008

Page 4

1 JUDGE BISSELL: The Special Master at
2 this time is opening matters for a bench decision.
3 The following constitutes the Special Master's
4 determination regarding the complaint of Leslie
5 Knordle, docket number 08-142.

6 This opinion/report is being issued
7 pursuant to the directives of the Order of Reference
8 to a Special Master and the Special Master's
9 Agreement and the guiding principles of law which
10 underlie this decision to be applied to the facts
11 upon which it is based as set forth in the jury
12 instructions in the Walker and Mejias jury charges to
13 the extent applicable to the allegations of Mr.
14 Knordle's case.

15 As finalized after review under Local
16 Civil Rule 52.1, the transcript of this oral opinion
17 will constitute the written report required by
18 paragraph seven of the Order of Reference to a
19 Special Master.

20 At the time the lockdown began, Leslie
21 Knordle was a resident of E Unit. On July 31st,
22 1997, E Unit was taken to the gym so that officers
23 could search that unit. Leslie Knordle was marched
24 in line on the way to the gym and he describes the
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April 25, 2008

Page 5

1 events of that trip in part at least. At pages 167
2 and 168 of the transcript of proceedings on February
3 15th, 2008.

4 As he describes it, the next morning,
5 and that's July 31st, the SOG unit came through the E
6 Unit and let's say had us come out of our cells to
7 escort us to the gym. While escorting us to the gym
8 one officer had me with the PR-24 in like a chicken
9 wing behind my back. Even though we were handcuffed,
10 he tells me look at this other officer and tell him
11 you're sorry. I go to look at the other officer to
12 my right. He comes across my face with another PR-24
13 also. At that time, right, I didn't see his face or
14 anything like that. At that time the officer that
15 had me in the chicken wing that was escorting me over
16 there, right, picked me up off the ground because I
17 had dropped from the hit and picked me up and started
18 calling me all kind of derogatory names and so on and
19 so forth to the gym.

20 There is a further discussion of that
21 incident at pages 173 through 181. I'm not going to
22 quote it all, but beginning at page 173: When you
23 were first taken out of E Unit were you given any
24 instructions as to what you should do when walking
25 through the gauntlet?

April 25, 2008

Page 6

1 Answer: Keep your head pointed
2 downwards and towards the ground.

3 Now, as you were walking through the
4 gauntlet, the SOCs that were on both sides, what, if
5 anything, were they doing?

6 Answer: Saying whatever they felt like
7 saying to you. Trying to antagonize you. I believe
8 they was trying to intimidate you to get you to make
9 a move so they could do whatever they wanted to do to
10 you.

11 Skipping a bit to page 175: At some
12 point you mentioned something about being told to say
13 something to another officer. Let's go through that
14 again.

15 Answer: Officer to my left in the
16 gauntlet, right, told me to look off to the officer
17 to the right and tell him I'm sorry. The officer
18 that had me in the PR-24 with the chicken wing turned
19 my body this way because he had control of it.
20 Turned it to the right. And as I did that the
21 officer that was standing right there in the
22 gauntlet -- from the gauntlet came across my face. I
23 dropped.

24 Further questioning at page 176: And
25 where did he hit you with the baton?

April 25, 2008

Page 7

1 Answer: Across the eye.

2 Skipping some intervening testimony to
3 the bottom of page 177: As a result of being struck
4 with the PR-24 just to the outside of your left eye,
5 what, if anything, happened to that area where you
6 were hit?

7 Answer: It was busted open.

8 Bleeding?

9 Yes, it was.

10 Indicated he still had scarring in that
11 area and I noted the presence of such a scar while he
12 testified here before me.

13 He also testified to one other incident
14 occurring in the gym to him and that testimony
15 appears at page 168 as follows: As we were sitting
16 up in the gym, we were told to sit in this position
17 for a certain amount of time and it was a position
18 that was very, very uncomfortable and if you moved,
19 you know, they told you if you moved something was
20 going to happen to you. I moved a couple of times
21 because, like I said, it was a very strenuous
22 position. And they came across my neck a couple of
23 times, two or three times. I believe it was three
24 times I got hit across the back of my neck.

25 I find that as far as the second

April 25, 2008

Page 8

1 incident in the gym is concerned that that is not
2 actionable conduct. He disobeyed a standing and
3 well-known order to remain perfectly still. I find,
4 frankly, that the use of a baton under these
5 circumstances and to that rather modest amount is not
6 actionable. He was disobeying an order and some
7 acceptable level of corporal response is and was
8 appropriate.

9 There was also some testimony about a
10 shower incident in this matter. As I recall it, I
11 don't find that actionable either.

12 However, with regard to the events in
13 the line or gauntlet on the way to the gym, I find
14 that that does constitute the use of excessive force
15 without any valid penalogical purpose in a sadistic
16 fashion. And I'm paraphrasing to some extent the
17 recitation of the standards of Eighth Amendment
18 actions as set forth in the jury instructions which,
19 as I said, are already incorporated here.

20 What we had in this situation literally
21 was setting this guy up. The guards were playing
22 with him. He's under the control of a guard in line,
23 the guard on the left side of the line says turn to
24 the man across from you and apologize to him. And
25 not only -- he doesn't even do it voluntarily, but

April 25, 2008

Page 9

1 he's twisted in that direction by the guard who has
2 him under control. And then the man on the right
3 side of the line basically says, hey, you violated an
4 order, you're supposed to look forward and keep your
5 head down and belts him across the face.

6 I find that that is credible testimony,
7 I find nothing in the evidence here to indicate that
8 that did not happen. Some of the other testimony
9 I've heard here from time to time about incessant
10 beatings, 20, 30, 40, 50 blows or something like
11 that, frankly, is not credible for a number of
12 reasons and I've dealt with it from time to time in
13 the past. However, here this type of rather quick,
14 but painful and completely unjustifiable incident
15 has, indeed, a ring of truth to it, particularly when
16 we're considering it's July 31st, only a day after
17 the murder of Officer Baker.

18 I want to revisit the shower incident
19 just briefly. His testimony about that was that he
20 was placed into a shower, turned the water on, all he
21 got was scalding water which burned his legs.

22 The evidence as I've analyzed it does
23 not indicate any intentional infliction of pain. At
24 most, this would be considered some sort of
25 negligence, if you will, on behalf of the officer

April 25, 2008

Page 10

1 in not getting him out of there quickly enough.
2 More likely basically just an accident. I have no
3 reason to believe, for instance, that this was any
4 use of an implement of torture.

5 Now, the injury inflicted in the
6 assault was not particularly serious or long-lasting.
7 It left a minor residual scar. There was minor
8 bleeding which stopped rather promptly.
9 Nevertheless, the injuries, though modest are
10 certainly recoverable. Thus, I find and will
11 recommend the award of a compensatory damages of 35
12 hundred dollars. I do not find the basis for
13 punitive damages and I will elaborate upon that at
14 this time.

15 To reiterate, the act of manipulating
16 Mr. Knordle in this manner in order that he could be
17 struck, allegedly, for disobeying an order when, in
18 fact, that was far from the case, and striking of him
19 under the circumstances goes well beyond the
20 necessity of any proper law enforcement needs or any
21 proper exercise of discipline or any other legitimate
22 penalogical purpose as well defined in the jury
23 instructions which I've incorporated here. It was
24 indeed excessive, unnecessary and sadistic force
25 imposed upon Mr. Knordle within the contemplation of

April 25, 2008

Page 11

1 those legal principles. However, in light of the
2 fact that the striking of Mr. Knordle was not
3 prolonged or repeated, while actionable for recovery
4 of compensatory damages, I do not find that this
5 assault visited upon him rose to the level of being
6 so egregious as to support a claim for punitive
7 damages, at least as against the unidentified
8 officers that were with him and the ones who
9 inflicted his injury.

10 Finally, although not every item of
11 evidence has been discussed in this opinion/report,
12 all evidence presented to the Special Master was
13 reviewed and considered. I find that the injury
14 inflicted here is actionable. I find that the injury
15 was acute initially; however, no permanency has
16 remained from it other than the presence of a rather
17 modest scar.

18 Accordingly, I recommend in this report
19 that the district court enter an award of
20 compensatory damages in the amount of three thousand
21 five hundred dollars in Mr. Knordle's favor.

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April 25, 2008

Page 12

C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and
Certified Shorthand Reporter of the State of New
Jersey, do hereby certify that the foregoing is a
true and accurate transcript of the testimony as
taken stenographically by and before me at the time,
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a
relative nor employee nor attorney nor counsel of any
of the parties to this action, and that I am neither
a relative nor employee of such attorney or counsel,
and that I am not financially interested in the
action.



Theresa O. Mastroianni, C.S.R.

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

Certificate No. X10857

Date: April 29, 2008

April 25, 2008

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<p>A</p> <p>acceptable 8:7</p> <p>accident 10:2</p> <p>accurate 12:6</p> <p>act 10:15</p> <p>action 1:2 12:11 12:14</p> <p>actionable 8:2,6 8:11 11:3,14</p> <p>actions 8:18</p> <p>acute 11:15</p> <p>Agreement 4:9</p> <p>all 1:9</p> <p>allegations 4:13</p> <p>allegedly 10:17</p> <p>Amendment 8:17</p> <p>amount 7:17 8:5 11:20</p> <p>analyzed 9:22</p> <p>Answer 6:1,6,15 7:1,7</p> <p>antagonize 6:7</p> <p>apologize 8:24</p> <p>appears 7:15</p> <p>applicable 4:13</p> <p>applied 4:10</p> <p>appropriate 8:8</p> <p>April 1:15 12:21</p> <p>area 7:5,11</p> <p>assault 10:6 11:5</p> <p>attorney 12:10 12:12</p> <p>ATTORNEYS 3:5,11</p> <p>Audubon 2:21</p> <p>award 10:11 11:19</p>	<p>baton 6:25 8:4</p> <p>Bayside 1:5</p> <p>beatings 9:10</p> <p>began 4:20</p> <p>beginning 5:22</p> <p>behalf 9:25</p> <p>believe 6:7 7:23 10:3</p> <p>belts 9:5</p> <p>bench 4:2</p> <p>beyond 10:19</p> <p>BISSELL 1:20 4:1</p> <p>bit 6:11</p> <p>bleeding 7:8 10:8</p> <p>blows 9:10</p> <p>body 6:19</p> <p>bottom 7:3</p> <p>briefly 9:19</p> <p>burned 9:21</p> <p>busted 7:7</p>	<p>Commission 12:20</p> <p>compensatory 10:11 11:4,20</p> <p>complaint 4:4</p> <p>completely 9:14</p> <p>comtemplation 10:25</p> <p>concerned 8:1</p> <p>conduct 8:2</p> <p>considered 9:24 11:13</p> <p>considering 9:16</p> <p>constitute 4:17 8:14</p> <p>constitutes 4:3</p> <p>control 6:19 8:22 9:2</p> <p>corporal 8:7</p> <p>counsel 12:10,12</p> <p>couple 7:20,22</p> <p>court 1:1 2:4,6 2:20 11:19</p> <p>credible 9:6,11</p> <p>C.S.R 12:19</p>	<p>discussion 5:20</p> <p>disobeyed 8:2</p> <p>disobeying 8:6 10:17</p> <p>district 1:1,1 2:6 11:19</p> <p>docket 4:5</p> <p>doing 6:5</p> <p>dollars 10:12 11:21</p> <p>downwards 6:2</p> <p>dropped 5:17 6:23</p> <p>E</p> <p>E 3:1,1 4:21,22 5:5,23 12:1,1</p> <p>egregious 11:6</p> <p>Eighth 8:17</p> <p>either 8:11</p> <p>elaborate 10:13</p> <p>employee 12:10 12:12</p> <p>enforcement 10:20</p> <p>enter 11:19</p> <p>escort 5:7</p> <p>escorting 5:7,15</p> <p>ESQUIRE 3:3,8 3:9</p> <p>ESQUIRES 3:3</p> <p>et 1:9</p> <p>events 5:1 8:12</p> <p>evidence 9:7,22 11:11,12</p> <p>excessive 8:14 10:24</p> <p>exercise 10:21</p> <p>Expires 12:20</p> <p>extent 4:13 8:16</p> <p>eye 7:1,4</p>	<p>fact 10:18 11:2</p> <p>facts 4:10</p> <p>far 7:25 10:18</p> <p>fashion 8:16</p> <p>FAUVER 1:9</p> <p>favor 11:21</p> <p>February 5:2</p> <p>felt 6:6</p> <p>finalized 4:15</p> <p>Finally 11:10</p> <p>financially 12:13</p> <p>find 7:25 8:3,11 8:13 9:6,7 10:10,12 11:4 11:13,14</p> <p>first 5:23</p> <p>five 11:21</p> <p>following 4:3</p> <p>follows 7:15</p> <p>force 8:14 10:24</p> <p>foregoing 12:5</p> <p>FORMAROLI 2:20</p> <p>forth 4:11 5:19 8:18 12:8</p> <p>forward 9:4</p> <p>frankly 8:4 9:11</p> <p>FRIDAY 1:15</p> <p>further 5:20 6:24 12:9</p>
<p>B</p> <p>back 5:9 7:24</p> <p>Baker 9:17</p> <p>based 4:11</p> <p>basically 9:3 10:2</p> <p>basis 10:12</p>	<p>C</p> <p>C 3:1 12:1,1</p> <p>calling 5:18</p> <p>Camden 2:7 3:4</p> <p>case 4:14 10:18</p> <p>cells 5:6</p> <p>certain 7:17</p> <p>certainly 10:10</p> <p>Certificate 12:21</p> <p>Certified 2:3,20 12:4</p> <p>certify 12:5,9</p> <p>charges 4:12</p> <p>chicken 5:8,15 6:18</p> <p>circumstances 8:5 10:19</p> <p>Civil 1:2 4:16</p> <p>claim 11:6</p> <p>come 5:6</p> <p>comes 5:12</p> <p>commencing 2:7</p>	<p>D</p> <p>damages 10:11 10:13 11:4,7 11:20</p> <p>date 12:8,21</p> <p>day 9:16</p> <p>dealt 9:12</p> <p>decision 4:2,10</p> <p>Defendants 1:10 3:11</p> <p>defined 10:22</p> <p>derogatory 5:18</p> <p>describes 4:24 5:4</p> <p>determination 4:4</p> <p>direction 9:1</p> <p>directives 4:7</p> <p>discipline 10:21</p> <p>discussed 11:11</p>	<p>F</p> <p>F 12:1</p> <p>face 5:12,13 6:22 9:5</p>	<p>G</p> <p>gauntlet 5:25 6:4,16,22,22 8:13</p> <p>Gerry 2:6</p> <p>getting 10:1</p> <p>given 5:23</p> <p>go 5:11 6:13</p> <p>goes 10:19</p> <p>going 5:21 7:20</p> <p>GRIEGEL 3:7</p> <p>ground 5:16 6:2</p> <p>guard 8:22,23 9:1</p>

April 25, 2008

14

guards 8:21 guiding 4:9 guy 8:21 gym 4:22,24 5:7 5:7,19 7:14,16 8:1,13 <hr/> H H 1:9 HAMILTON 3:10 handcuffed 5:9 happen 7:20 9:8 happened 7:5 head 6:1 9:5 heard 9:9 hereinbefore 12:8 hey 9:3 HIGHWAY 3:9 hit 5:17 6:25 7:6 7:24 HONORABLE 1:20 Horse 2:21 House 2:6 hundred 10:12 11:21 <hr/> I implement 10:4 imposed 10:25 incessant 9:9 incident 5:21 7:13 8:1,10 9:14,18 incorporated 8:19 10:23 indicate 9:7,23 Indicated 7:10 inflicted 10:5 11:9,14 infliction 9:23 initially 11:15 injuries 10:9 injury 10:5 11:9	11:13,14 instance 10:3 instructions 4:12 5:24 8:18 10:23 intentional 9:23 interested 12:13 intervening 7:2 intimidate 6:8 issued 4:6 item 11:10 <hr/> J Jersey 1:1 2:5,7 2:21 3:4,10 12:5,20 JOHN 1:20 JUDGE 4:1 July 4:21 5:5 9:16 jury 4:11,12 8:18 10:22 <hr/> K keep 6:1 9:4 KENNETH 3:9 kind 5:18 Knordle 1:7 4:5 4:21,23 10:16 10:25 11:2 Knordle's 4:14 11:21 know 7:19 <hr/> L law 4:9 10:20 LAWRENCE 3:3 left 6:15 7:4 8:23 10:7 legal 11:1 legitimate 10:21 legs 9:21 Leslie 1:7 4:4,20 4:23 let's 5:6 6:13	level 8:7 11:5 license 2:4 light 11:1 LINDSAY 3:3,3 line 4:24 8:13,22 8:23 9:3 literally 8:20 Litigation 1:6 Local 4:15 lockdown 4:20 long-lasting 10:6 look 5:10,11 6:16 9:4 LOUGHRY 3:3 LOZIER 3:9 <hr/> M man 8:24 9:2 manipulating 10:15 manner 10:16 marched 4:23 MARK 3:8 MARKET 3:4 Master 1:6,20 4:1,8,19 11:12 Master's 4:3,8 Mastroianni 2:3 2:20 12:3,19 matter 1:4 2:3 8:10 matters 4:2 Mejias 4:12 mentioned 6:12 minor 10:7,7 modest 8:5 10:9 11:17 morning 5:4 move 6:9 moved 7:18,19 7:20 murder 9:17 <hr/> N N 3:1	names 5:18 necessity 10:20 neck 7:22,24 needs 10:20 negligence 9:25 neither 12:9,11 Nevertheless 10:9 New 1:1 2:5,7,21 3:4,10 12:4,20 Notary 2:5 12:3 12:20 noted 7:11 number 2:4 4:5 9:11 <hr/> O O 2:3 12:3,19 occurring 7:14 officer 5:8,10,11 5:14 6:13,15 6:16,17,21 9:17,25 officers 4:22 11:8 ones 11:8 open 7:7 opening 4:2 opinion 1:5 4:16 opinion/report 4:6 11:11 oral 4:16 order 4:7,18 8:3 8:6 9:4 10:16 10:17 outside 7:4 <hr/> P P 3:1,1 page 5:22 6:11 6:24 7:3,15 pages 5:1,21 pain 9:23 painful 9:14 paragraph 4:18 paraphrasing	8:16 part 5:1 particularly 9:15 10:6 parties 12:11 PC 3:7 penological 8:15 10:22 perfectly 8:3 permanency 11:15 picked 5:16,17 Pike 2:21 place 12:8 placed 9:20 PLAINTIFFS 3:5 playing 8:21 Plaza 2:6 point 6:12 pointed 6:1 position 7:16,17 7:22 presence 7:11 11:16 presented 11:12 principles 4:9 11:1 Prison 1:5 proceedings 2:2 5:2 prolonged 11:3 promptly 10:8 proper 10:20,21 PR-24 5:8,12 6:18 7:4 Public 2:5 12:3 12:20 punitive 10:13 11:6 purpose 8:15 10:22 pursuant 4:7 <hr/> Q questioning 6:24
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April 25, 2008

15

quick 9:13 quickly 10:1 quote 5:22	S 3:1 sadistic 8:15 10:24 saying 6:6,7 says 8:23 9:3 scalding 9:21 scar 7:11 10:7 11:17 scarring 7:10 search 4:23 second 7:25 see 5:13 serious 10:6 set 4:11 8:18 12:8 setting 8:21 seven 4:18 Shorthand 12:4 shower 8:10 9:18,20 side 8:23 9:3 sides 6:4 sit 7:16 sitting 7:15 situation 8:20 Skipping 6:11 7:2 SOG 5:5 SOGs 6:4 sorry 5:11 6:17 sort 9:24 South 2:21 Special 1:6,20 4:1,3,8,8,19 11:12 SQUARE 3:10 standards 8:17 standing 6:21 8:2 started 5:17 State 1:5 2:5 3:9 12:4,20 States 1:1 2:6 stenographica... 12:7 stopped 10:8	STREET 3:4 strenuous 7:21 striking 10:18 11:2 struck 7:3 10:17 support 11:6 supposed 9:4	uncomfortable 7:18 underlie 4:10 unidentified 11:7 unit 4:21,22,23 5:5,6,23 United 1:1 2:6 unjustifiable 9:14 unnecessary 10:24 use 8:4,14 10:4	08690 3:10 <hr/> 1 <hr/> 1337 3:9 15th 5:3 167 5:1 168 5:2 7:15 173 5:21,22 175 6:11 176 6:24 177 7:3 181 5:21 1997 4:22 <hr/> 2 <hr/> 20 9:10 2008 1:15 5:3 12:21 2010 12:20 25 1:15 251 2:21 29 12:21 <hr/> 3 <hr/> 30 9:10 30X100085700 2:4 31st 4:21 5:5 9:16 33 3:9 330 3:4 35 10:11 <hr/> 4 <hr/> 40 9:10 <hr/> 5 <hr/> 5 12:20 50 9:10 52.1 4:16 <hr/> 6 <hr/> 609-586-2257 3:10 <hr/> 8 <hr/> 856-546-1100			
R 3:1 12:1 reason 10:3 reasons 9:12 recall 8:10 recitation 8:17 recommend 10:11 11:18 recoverable 10:10 recovery 11:3 Reference 4:7 4:18 regard 1:4 8:12 regarding 4:4 reiterate 10:15 relative 12:10,12 remain 8:3 remained 11:16 repeated 11:3 report 1:5 4:17 11:18 Reporter 2:4 12:4 Reporting 2:20 required 4:17 resident 4:21 residual 10:7 response 8:7 result 7:3 review 4:15 reviewed 11:13 revisit 9:18 right 5:12,13,16 6:16,17,20,21 9:2 ring 9:15 rose 11:5 ROSELLI 3:7,8 Rule 4:16	S	T 12:1,1 taken 2:3 4:22 5:23 12:7 tell 5:10 6:17 tells 5:10 testified 7:12,13 testimony 7:2,14 8:9 9:6,8,19 12:6 Theresa 2:3 12:3 12:19 thousand 11:20 three 7:23,23 11:20 time 4:2,20 5:13 5:14 7:17 9:9,9 9:12,12 10:14 12:7 times 7:20,23,23 7:24 told 6:12,16 7:16 7:19 torture 10:4 transcript 2:2 4:16 5:2 12:6 trip 5:1 true 12:6 truth 9:15 trying 6:7,8 turn 8:23 turned 6:18,20 9:20 twisted 9:1 two 7:23 type 9:13	V valid 8:15 Videoconfere... 2:20 violated 9:3 visited 11:5 voluntarily 8:25 vs 1:8	W W 1:20 3:3,9 Walker 4:12 walking 5:24 6:3 want 9:18 wanted 6:9 water 9:20,21 way 4:24 6:19 8:13 well-known 8:3 we're 9:16 White 2:21 WILLIAM 1:9 wing 5:9,15 6:18 written 4:17	X XIO857 12:21	0 08-142 1:2 4:5 08102 2:7 3:4 08106 2:21	U

April 25, 2008

16

2:22
856-968-9201
3:5

9
9:30 2:7